IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 935 of 1983

with

FIRST APPEAL No. 936 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANCHANLAL GOVINDJI PAREKH - Appellant(s)
Versus
SPECIAL LAND OFFICER - Defendant(s)

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Appearance :
MR RN SHAH for the appellant.
MR CHAUHAN, AGP, for the respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 24/11/2005

ORAL JUDGMENT

1. These two appeals arise out of a common judgment and award passed in references made to District Court, Surat, under Section 18 of the Land Acquisition Act, bearing Land Reference Cases No.9 and 12 of 1980 on 30th August, 1982. The two References relate to lands of the appellant bearing Survey Nos.294/1 and 294/2, at Kathargam, Taluka Choriyasi, District Surat.

2. The said lands came to be acquired by Special Land Acquisition Officer and an amount of Rs.8925.00 by way of compensation and another amount of Rs.1338.25 ps. by way of solatium came to be paid to the appellant in Land Reference Case No.9 of 1980, whereas an amount of Rs.34,417.00 by way of compensation and another amount Rs.5165.55 ps. by way of solatium came to be paid to the appellant in respect of Land Reference Case No.12 of 1980. According to the appellant, the compensation ought to have been awarded at the rate of Rs.2400/- per Guntha as against Rs.600/- awarded by the Land Acquisition Officer and, therefore, he requested the Collector to make a reference under Section 18 to District Court, Surat.

3. The District Court, after considering rival side cases, came to a conclusion that taking into consideration the precedent, the land ought to have been valued at Rs.1050/- per Guntha and, therefore, concluded that the compensation awarded by the Land Acquisition Officer at the rate of Rs.600/- per Guntha was inadequate.

3.1 The Reference Court, however, while dictating the judgment, noticed that the appellant was paid amount in excess to his entitlement even at the rate of Rs.1050/- per Guntha due to some mistake in considering the size of the land and/or some other mathematical mistake. The Reference Court, therefore, ordered the appellant to refund an amount of Rs.7848.75 ps. in respect of Land Reference Case No.9 of 1980 and an amount of Rs.29450.80 ps. in respect of Land Reference Case No.12 of 1980. Aggrieved by the said judgment and award, present appeals are preferred by the original land owner.

4. Learned Advocate, Mr. Niral Mehta, has raised following contentions :-

(1) The Reference Court, though having come to a conclusion that the compensation awarded by the Special Land Acquisition Officer is inadequate, has dismissed the Reference.

(2) The Reference Court has, in a reference made at the instance of the appellant, ordered refund of amount in total absence of any such contention by the Government.

(3) The order of refund was passed in violation of principles of natural justice.

Mr. Mehta, therefore, submitted that the judgment and award may be set aside.

5. The appeal is opposed to by learned Assistant Government Pleader, Mr. Chauhan. He submitted that the Reference Court has found that, in fact, less land of the appellant was acquired and, by mistake, compensation was paid for a larger piece of land. The Reference Court has, therefore, struck a balance by passing the order. Mr. Chauhan submitted that the Reference Court has considered the entitlement of the appellant to compensation at the rate of Rs.1050/- per Guntha and has, thereby, enhanced the amount of compensation. But no further award is passed in light of the fact that the appellant was paid excess amount of compensation. The amount that is ordered to be refunded is only the amount of difference after considering the compensation at the rate of Rs.1050 per Guntha and solatium thereon at the rate of 15%. He submitted that the appeal may, therefore, be dismissed.

6. This Court has taken into consideration rival side contentions and has gone through the record and proceedings.

7. Though it sounds very attractive that the Reference Court has come to a conclusion that the compensation awarded by the Special Land Acquisition Officer is inadequate, yet it has dismissed the Reference and, therefore, this appeal may be entertained. In substance, the contention is

devoid of merits for the reason that the Reference Court has taken into consideration the compensation awarded by the Special Land Acquisition Officer, which is at the rate of Rs.600/- per Guntha. The Reference Court has also taken into consideration the precedent whereunder compensation at Rs.1050/- per Guntha was awarded in a very similarly situated case of survey number located nearby. The Reference Court has also taken into consideration the fact that no other precedent or sale instance was indicated before it and, ultimately, it came to a conclusion that the appellant would be entitled to compensation at the rate of Rs.1050/- per Guntha with proportionate solatium at the rate of 15% and so held ultimately. It is, therefore, not right to say that the claim of the appellant is totally dismissed. The dismissal is aimed at not awarding any further compensation, i.e. compensation in addition to what is received by the appellant. This has happened because the Reference Court, after the hearing was over, while dictating the judgment, found that there was a mistake in computing the compensation paid to the appellant. It was noticed that the size of the land acquired was smaller than the size of land for which compensation is paid and the amount paid to the appellant was much in excess than the amount receivable by the appellant, even if the compensation is considered at the rate of Rs.1050/- per Guntha. In the opinion of this Court, therefore, so far as the finding of the Reference Court on quantum of compensation is concerned, no interference is called for.

8. The only question that requires now to be considered is whether

the Reference Court could have ordered the appellant to refund the amount received by the appellant by way of compensation, which, according to the Reference Court, was in excess to his entitlement.

9. In the first instance, what is required to be recorded is that it was not the case of the Government in the written statement that the amount paid is in excess or that there was any mistake in computing the amount of compensation. It was only after the hearing that the learned Judge noticed that the quantum of land acquired was less than the land for which the compensation was paid.

10. The learned Judge did not deem it necessary or proper to call upon the parties to address the Court on this aspect and straightaway passed the order for refund. The order, thus, is passed in violation of principles of natural justice.

11. The second aspect that requires consideration is that the order is passed in a reference made at the instance of the appellant and in absence of any such plea by the Government.

12. It is also worth a note that the Government has not undertaken any exercise or action under Section 15-A of the Land Acquisition Act, which was open to the Government to do, if according to it there was some mistake in

calculating the amount of compensation or in respect of the size of the land acquired.

13. The appeals, therefore, must succeed only to the extent of setting aside the order of refund as the said order is passed in violation of principles of natural justice and it is passed in absence of any such plea by the Government in reference made at the instance of the appellant. The appeals, therefore, succeed to that extent without enhancing the amount of compensation. The award would stand modified accordingly. No costs.

[A. L. DAVE, J.]

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